

North Carolina State  
Long-Term Care  
Ombudsman Program

2013 Annual Report



*Promoting quality of life  
and quality of care  
for long term care residents.*





**North Carolina Department of Health and Human Services  
Division of Aging and Adult Services**

Pat McCrory  
Governor

Aldona Z. Wos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Suzanne P. Merrill  
Division Director

December 12, 2014

I am pleased to submit the 2013 North Carolina Long-Term Care Ombudsman Program Annual Report for federal fiscal year October 1, 2012 through September 30, 2013.

This Annual Report provides a comprehensive snapshot of the statewide community advisory committee system. These volunteers have committed thousands of hours and miles in conducting personal visits with residents in facilities throughout the state. There is also an updated review of accomplishments in advocacy and direct services provided by both the Regional Long-Term Care Ombudsmen and the Office of the State Long-Term Care Ombudsman. Long-Term Care Ombudsmen, through empowerment and intervention, made a difference in the quality of care and quality of life for many residents. Program charts and data review demonstrate our achievements toward protecting residents' rights, emboldening families and educating consumers in addition to the Program maintaining its committed focus toward changing the culture of resident care in North Carolina.

North Carolina General Statute §§ 143B-181.18(8) requires the Office of the State Long-Term Care Ombudsman to prepare an annual report. A variety of information and data has been included in this year's report that I think illustrates the Long-Term Care Ombudsman Program's successful accomplishments during 2013.

It was an eventful and challenging year for the North Carolina Long-Term Care Ombudsman Program. I welcome any comments or questions you may have about our Annual Report.

Sincerely,

Sharon C. Wilder  
State Long Term Care Ombudsman

[www.ncdhhs.gov](http://www.ncdhhs.gov) • [www.ncdhhs.gov/aging](http://www.ncdhhs.gov/aging)

Tel 919-855-3400 • Fax 919-733-0443

Location: Taylor Hall, 693 Palmer Drive • Raleigh, NC 27603

Mailing Address: 2101 Mail Service Center • Raleigh, NC 27699-2101

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## Table of Contents

Long-Term Care Ombudsman Program Services Overview	1
Long-Term Care Ombudsman Program History and Purpose	2
Long-Term Care Ombudsman Program Organization	5
Complaint Management Summary and Charts – 2013	17

## Appendices

APPENDIX A: Nursing Home and Adult Care Home Residents' Rights	33
APPENDIX B: FFY 2013 Data Tables and Major Long-Term Care Issues from the N.C. Ombudsman Reporting Tool	35
APPENDIX C: Older Americans Act Title VII	41
APPENDIX D: North Carolina LTC Ombudsman Program General Statute	51





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## 2013 Program Overview

October 1, 2012 – September 30, 2013

North Carolina State and Regional Long-Term Care (LTC)  
Ombudsman Program

<b>3,058</b>	Complaints received by the LTC Ombudsman Program
<b>1,630</b>	Complainants assisted by State and Regional LTC Ombudsmen
<b>7,267</b>	Technical assistance provided to individuals regarding long-term care issues
<b>7,478</b>	Resident visits made in adult care homes and nursing homes
<b>596</b>	Facility licensure surveys observed
<b>168</b>	Resident Council meetings attended
<b>83</b>	Family Council meetings attended
<b>769</b>	Community education workshops conducted
<b>2,785</b>	Consultations to LTC providers
<b>367</b>	Training sessions provided for staff in LTC facilities
<b>2,153</b>	Hours spent training community advisory committee members and new ombudsmen

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## Long-Term Care Ombudsman Program History

The federal Older Americans Act provided the authorization for the establishment of a national Long-Term Care Ombudsman Program beginning in 1978.

In subsequent years, amendments to the Older Americans Act expanded the jurisdiction and scope of the Long-Term Care Ombudsman Program in each state to include both nursing homes and adult care homes, including the creation of a network of trained volunteers, an informal complaint resolution process and systems advocacy responsibilities related to problems impacting residents in long-term care facilities.

In 1989, the North Carolina State Long-Term Care Ombudsman Program was codified into state law through General Statute 143B-181.15-.25, which mirrors the federal mandates set forth in the Older Americans Act for the program. State legislation established both the Office of the State Long-Term Care Ombudsman and an Office of Regional Long-Term Care Ombudsman with the intent that the Long-Term Care Ombudsman Program would be administered statewide by the State Long-Term Care Ombudsman. The Office

of the State Long-Term Care Ombudsman is located in the Department of Health and Human Services, Division of Aging and Adult Services. The 16 Offices of the Regional Long-Term Care Ombudsman Programs are housed in Area Agencies on Aging across the state.

## Long-Term Care Ombudsman Program Purpose

The North Carolina Long-Term Care Ombudsman Program's mission is to protect residents' rights and improve the quality of care and life for residents in long-term care facilities by providing access and advocacy services that assist residents in protecting their health, safety, welfare, and rights.<sup>1</sup> The Long-Term Care Ombudsman Program's mandated responsibilities are to:

- Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;
- Provide information to the general public on long-term care issues;
- Promote community involvement with long-term care residents and facilities;



- Work with long-term care providers to resolve issues of common concern;
- Assist long-term care providers with staff training (particularly on Residents' Rights);
- Train and provide technical assistance to community advisory committee volunteers who are appointed by the boards of county commissioners;
- Collect and report data regarding the number of complaints handled and other program activities;
- Carry out activities for community education and prevention of elder abuse, neglect, and exploitation; and
- Provide information to public agencies, legislators, and others on problems impacting the rights of residents as well as make recommendations for resolution of issues identified.

<sup>1</sup> 42 USC § 3001 et seq. A copy of relevant sections is attached as Appendix C.

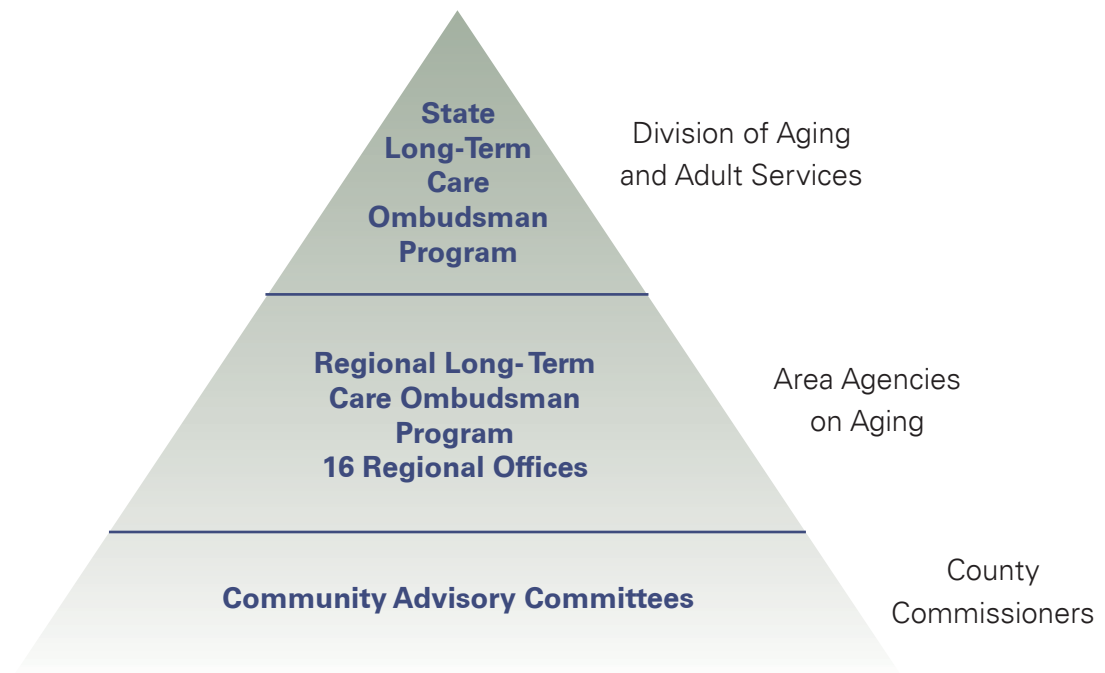
<sup>2</sup> § 143B-181.15-.25 et seq. A copy is attached as Appendix D.



# Long-Term Care Ombudsman Program Organization

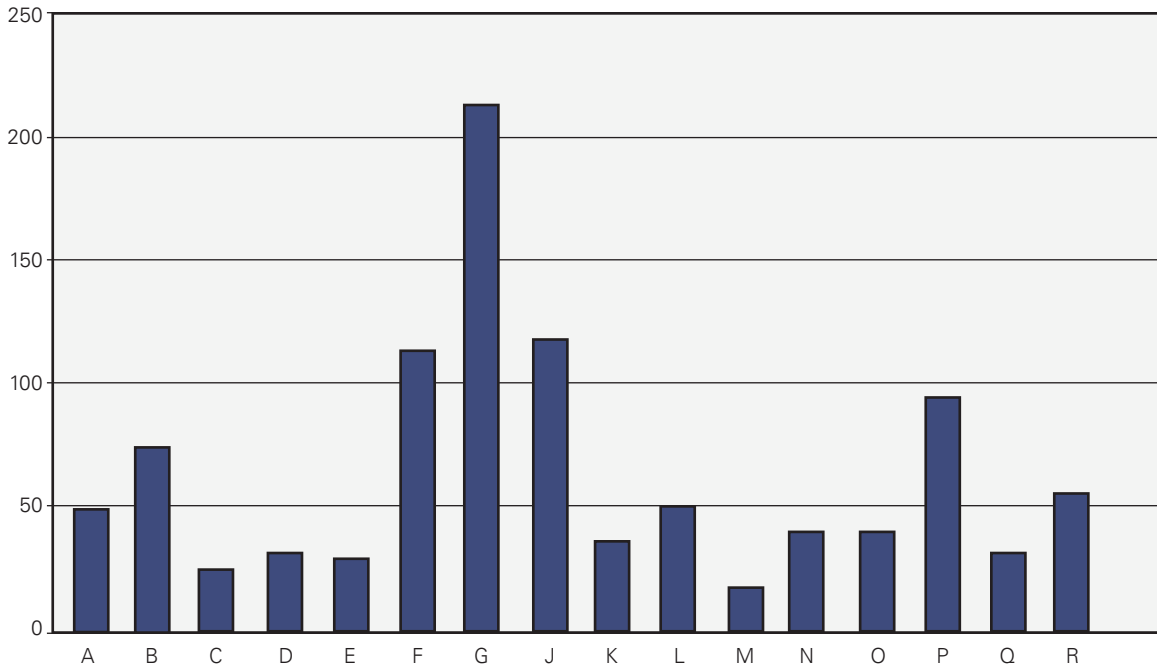
The Office of the State Long-Term Care Ombudsman is in the Elder Rights and Special Initiatives Section of the Division of Aging and Adult Services. The State Long-Term Care Ombudsman, along with an Ombudsman Program Specialist and an Ombudsman/Elder Rights Specialist manage day-to-day program administration that includes ensuring all newly hired regional ombudsmen complete the required state certification process and that the Program is in compliance with mandates in the Older Americans Act as amended and N. C. General Statutes. The Regional Long-Term Care Ombudsman Programs are housed in the 16 Area Agencies on Aging across the state. Each Regional Ombudsman Program provides advocacy and direct services to long-term care residents in a specified number of counties that comprise the Area Agency on Aging's service area.

## Program Oversight and Structure in North Carolina

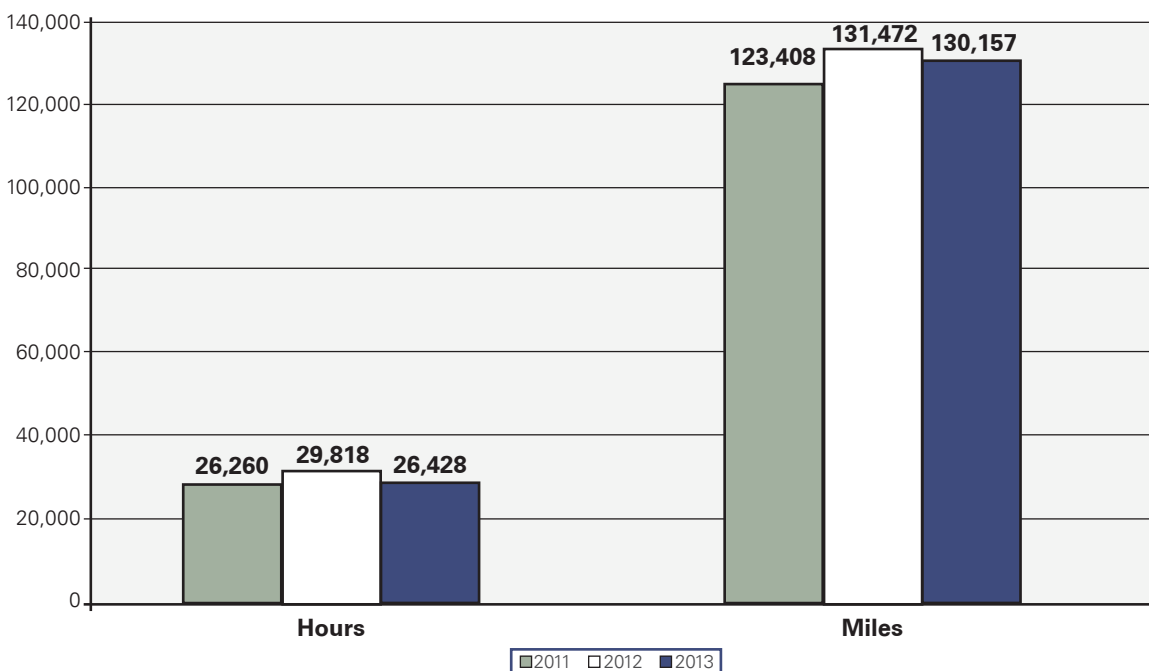


Established through state legislation in the mid-1970s, community advisory committees are comprised of local citizens appointed by each county's board of county commissioners based on the type and number of facilities located in the county. Once appointed, each community advisory committee member completes 15 hours of initial training prior to assuming the official duties mandated by state statute (G.S. 131D-31 and G. S. 131E-128). The regional long-term care ombudsmen ensure that each appointed volunteer completes the required training included in the State Long-Term Care Ombudsman Program's Policies and Procedures to equip them to serve as 'grassroots advocates' in their communities. The volunteers are responsible for visiting with residents and assisting residents and families in resolving grievances involving residents' rights. Committees also serve as catalysts for increasing community involvement with long-term care facilities in their area. There are currently 1,050 trained volunteers actively serving on the adult care home, nursing home or joint community advisory committees in all 100 counties of the state. Regional ombudsmen submit quarterly reports that include the number of volunteer hours logged by committee members. Volunteers are not required to report the number of miles they travel fulfilling their duties; however, many do voluntarily provide this information as part of their Quarterly Activity Reports.

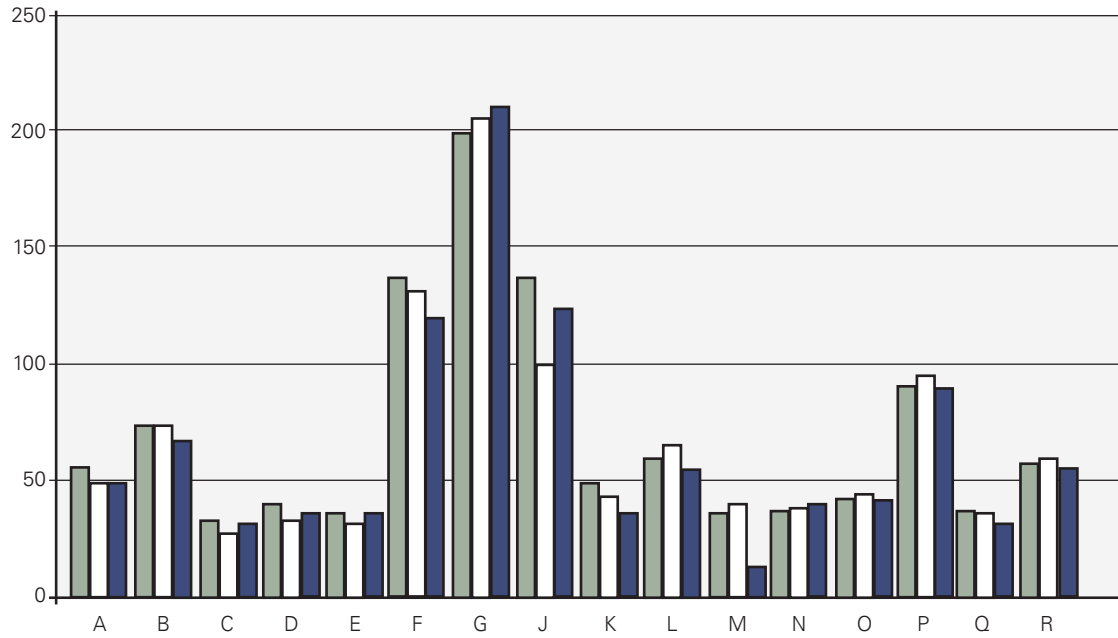
### Number of Community Advisory Committee Members per Region FFY 2013



### Community Advisory Committee Members' Hours and Miles Contributed through the LTC Ombudsman Program FFY 2011 - FFY 2013



### Number of CAC Volunteers Per Region FFY 2011 – FFY 2013

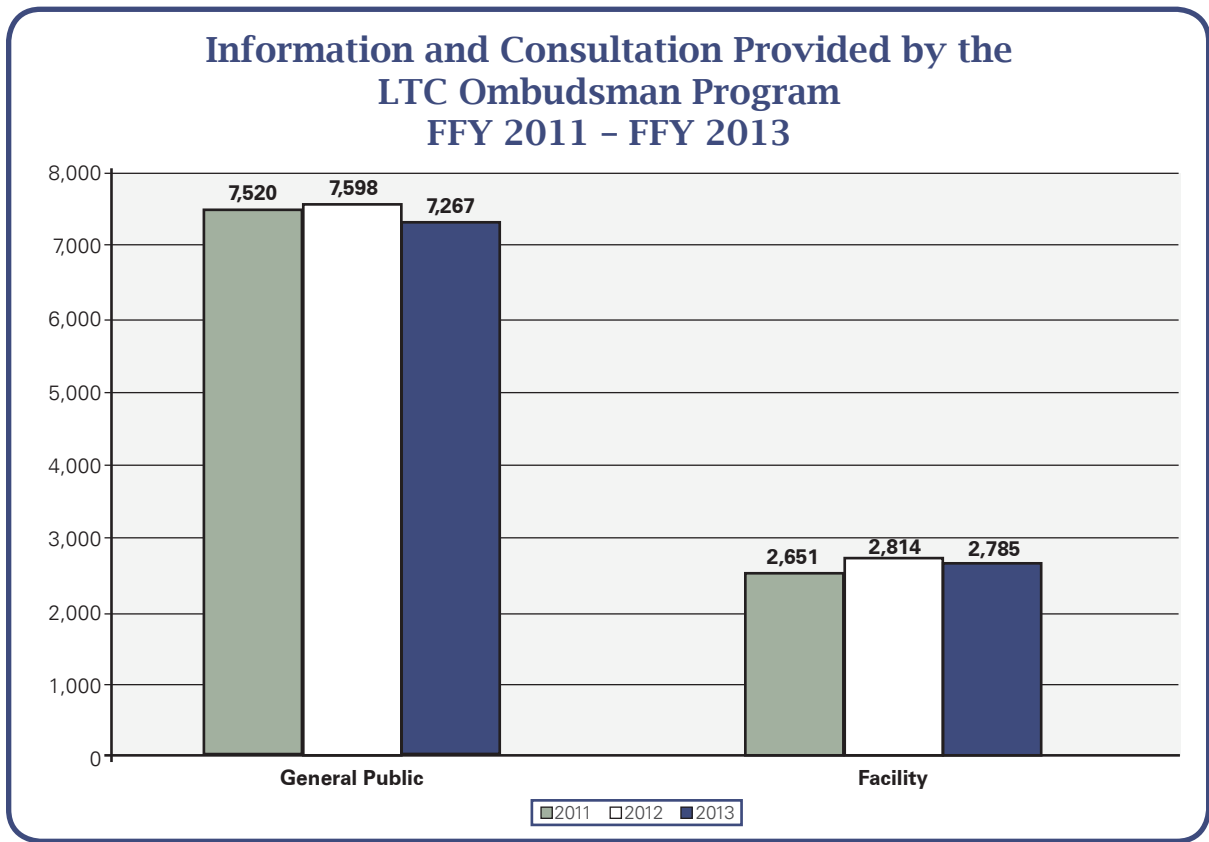


■ 2011 □ 2012 ■ 2013

	A	B	C	D	E	F	G	J	K	L	M	N	O	P	Q	R
2011	57	74	36	41	38	139	199	133	49	58	37	40	44	93	41	57
2012	49	74	31	36	35	129	204	101	42	61	41	41	46	95	40	58
2013	49	70	33	39	38	119	213	124	32	54	11	42	43	91	36	56







Ombudsmen provided **information and consultation to 7,267 individuals**, usually by telephone, during 2013.

The information most frequently requested:

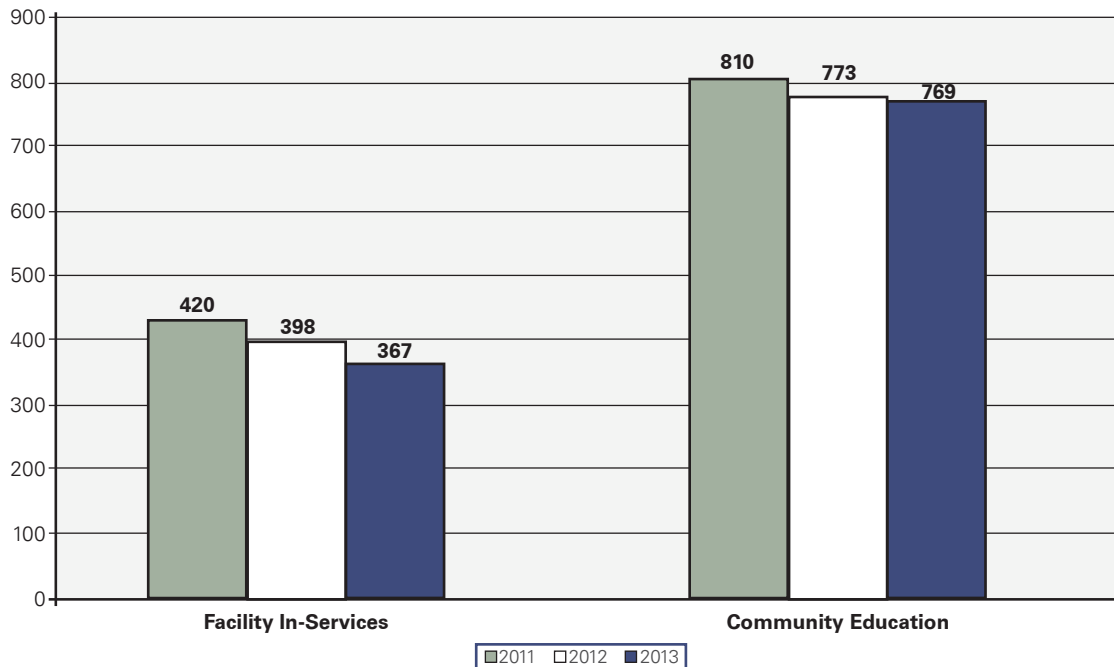
- How to select a long-term care facility
- Explanation of Residents' Rights
- Transfer/Discharge procedures and requirements.

Ombudsmen provided **2,785 consultations to Nursing Homes and Adult Care Homes**.

Most frequent topics of consultation to facilities:

- Transfer/Discharge process and procedures
- Residents' Rights
- Dealing with difficult behaviors.

### Long-Term Care Facility In-Services and Community Education FFY 2011 – FFY 2013



Ombudsmen provided **367 training sessions** for long-term care staff during 2013.

Most frequent topics of trainings:

- Residents' Rights
- Dementia, Capacity/Competency
- Aging Sensitivity Training.

The Ombudsman Program provided **769 community education sessions** for a variety of audiences during 2013.

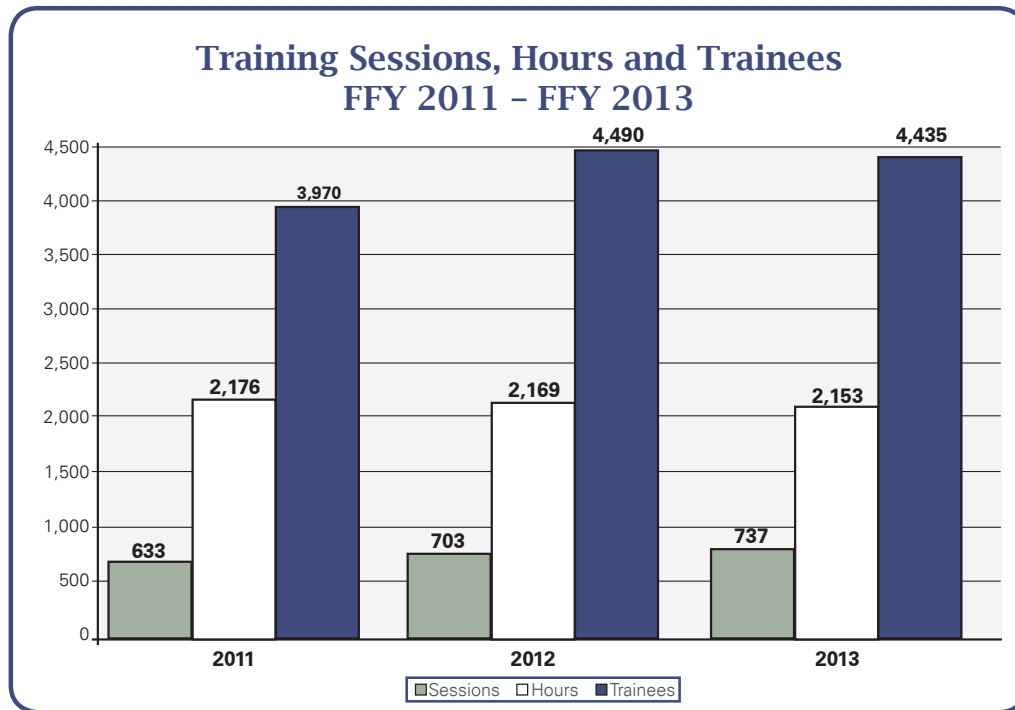
Most frequent educational topics included:

- Ombudsman Program

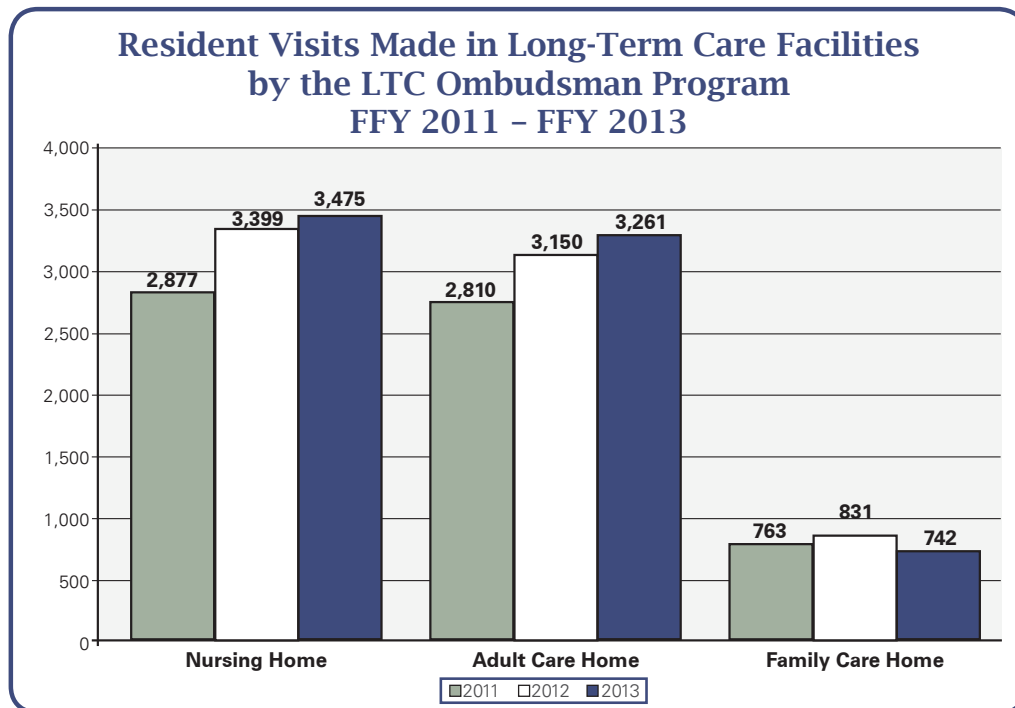
- Elder Abuse Awareness and Prevention

- Aging Sensitivity Training

Data available through the Ombudsman Program Documentation and Information system shows that **204 of the educational presentations conducted for facility staff, community groups and community advisory committee members** through the Long-Term Ombudsman Program focused on topics related to **Elder Abuse Prevention and Awareness**. A total of **5,640 attendees** participated in various Elder Abuse Prevention and Awareness educational sessions.



The Long-Term Care Ombudsman Program provided **737 training sessions** for Regional Ombudsmen and Volunteers. A total of **2,153 hours** were spent in providing training.



The Long-Term Care Ombudsman Program made **3,475 visits** to residents in Nursing Homes, **3,261 visits** to Adult Care Home residents and **742 visits** to Family Care Home residents.

## Example of a Regional Ombudsman's Empowerment toward Culture Change

Recently there has been a particular adult care home in my region that has been under strict regulatory oversight by the state because of serious issues identified during a facility survey. In an effort to ensure the many issues cited are corrected, a new executive director was hired to manage the facility. As a resident advocate, I have remained focused on finding opportunities to work with the new management and staff. My goal has been to empower them and make sure the new employees stay resident-focused as they make changes in service delivery. I completed two residents' rights in-services with the new staff. During those in-services, there was great discussion with staff regarding residents' choices, their right to be treated as individuals and with dignity, as well as respecting each person's right for privacy. I also was invited to attend the facility's Residents Council meeting where I spoke about Residents' Rights and the LTC Ombudsman Program. I educated the residents about the facility's grievance procedures, and how they as residents have the right to expect a reasonable response to all requests. The residents shared that during the past year that they had been fearful because they did not know what was happening within the building in terms of management and they had not been able to freely dialogue with the manager about internal issues as they arose. Together, we identified steps that could be taken by management to better address the residents' concerns. Wonderfully, working through that process has since opened up regular dialogue between the new executive director and the residents. The facility is now in the process of adding a monthly column in the residents' newsletter from the executive director, which is anticipated to help improve communication so residents are aware of all that is occurring in their home.



# North Carolina Long-Term Care Facilities 2013

## Nursing Homes

Number of Licensed Facilities	Number of Licensed Beds
444	50,335

## Adult Care Homes

Number of Licensed Facilities	Number of Licensed Beds
1,261	41,010





## 2013 Complaint Management Summary

The North Carolina Long-Term Care Ombudsman Program is mandated to receive, investigate and attempt to resolve grievances being experienced by long-term care residents using an array of informal grievance resolution techniques. Two primary tools utilized by long-term care ombudsmen are mediation and direct advocacy on behalf of a resident. A broad federal directive requires all long-term care ombudsmen to protect the rights, health, safety, welfare, quality of care and quality of life of long-term care residents. Additionally, federal law states that residents must have timely access to a long-term care ombudsman for advocacy services.

Allegations about violations of Residents' Rights are a primary trigger for a long-term care ombudsman to initiate the LTC Ombudsman Program's complaint management process. A consumer alleging infringements of federal or state regulations related to a long-term care facility's operational standards or resident services is assisted with referrals to other agencies such as the Complaint Intake Unit within the Division of Health Service Regulation. Likewise, the N.C. Long-Term Care Ombudsman Program is not authorized to investigate complaints about resident abuse, neglect or exploitation occurring in long-term care facilities. However, residents, family members or other consumers are provided with information and assistance to ensure all allegations of abuse or neglect are reported to a local county department of social services, adult protective services unit.

The Older Americans Act of 2006, as amended, mandates that every State Long-Term Care Ombudsman Program maintain a confidential data system which collects the documentation of the required Ombudsman Program activities including complaint Case Records. Program data from this system is submitted annually to the Administration on Aging. After analysis and verification,

each state's data is published on the Administration on Aging's web site: [www.aoa.acl.gov/AoA\\_Programs/Elder\\_Rights/Ombudsman/National\\_State\\_Data/Index.aspx](http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/National_State_Data/Index.aspx)

The following Ombudsman Program trends provide a brief snapshot of the work accomplished by North Carolina during 2013:

- Ninety-six percent (96%) of the time, a resident receives a personal visit by a Regional Long-Term Care Ombudsman within four days after complaints have been filed by or on behalf of a resident.
- 1,630 individual complaint cases were closed that included 3,058 complaints.
- 1,756 nursing home complaints and 1,302 adult care home complaints were handled by representatives of the N.C. Long-Term Care Ombudsman Program. Complaint disposition data indicates:
  - 2,546 complaints (83%) were resolved, partially resolved or required no further action be taken by regional ombudsmen.
  - 148 complaints (5%) were withdrawn by the resident or complainant prior to completion of an investigation.
  - 81 complaints (3%) could not be resolved to the satisfaction of the resident or complainant. This included 9 complaints that could not be addressed under current regulations or would require legislative action to amend current laws.
  - 274 complaints (9%) were referred to other agencies and either a final disposition was not obtained or the agency did not substantiate the complaint.

The Administration on Aging's National Ombudsman Reporting System categorizes 133 complaint codes into five major categories: Residents' Rights, Resident Care, Quality of Life, Administration, and Not Against Facility.

Current trends noted about the complaint data are:

- Overall, there was a nine percent (9%) decrease in total complaints received during 2013 as compared to 2012.
- Within the Residents' Rights category, nursing home complaints decreased by 178 and adult care home complaints decreased by 24.
- Complaints about inappropriate facility discharge procedures including improper notices of discharge, failures in planning a safe discharge to another location or not following other procedures required by federal or state law decreased by 91 complaints.
- Complaints under the Resident Care category (756) remained about the same as in 2012.
- Complaints in the Resident Quality of Life category decreased by 52 complaints, all related to nursing home issues.
- The charts on page 30 indicate a slight overall decrease in complaints about Abuse, Gross Neglect and Exploitation which is a subcategory under Residents' Rights. A noted exception is that adult care home complaints about resident-to-resident abuse and gross neglect both increased from last year. Nursing home complaints about abuse or neglect have continued to decrease.

Some of the decreases within the five major complaint categories reflect that the program received 358 fewer complaints during 2013. Additionally, specific to nursing homes, perhaps a small percentage of the decrease in complaints would correlate with the intense two-year focus by the Long-Term Care Ombudsman Program on engaging skilled nursing facilities' management teams through the N.C. Achieving Excellence in Nursing Homes Collaborative. Through this partnership, roughly one-third of North Carolina's nursing facilities focused on changing their internal care and services standards to incorporate care delivery that was resident-centered.

Also, in response to an Office of Inspector General's report on the inappropriate use of antipsychotic drugs by skilled nursing facilities, the Centers for Medicare and Medicaid launched an initiative in 2012 creating a national partnership to improve dementia care. Shortly thereafter, CMS issued a national directive for all nursing homes to achieve a 15 percent reduction in use of these drugs by the end of the year. Working collaboratively with other state partners, the Long-Term Care Ombudsman Program advocated for facility staff to implement alternative resident-centered care approaches instead of relying on the over use of antipsychotic drugs to control resident behavior. One positive outcome of the Program's collaboration on these efforts is reflected in our data as a two percent increase in Ombudsman visits with residents in nursing homes during 2013.

In reviewing 2013 data reported for the other required Long-Term Care Ombudsman Program activities, it is apparent that three State Office staff and the 38 Regional Long-Term Care Ombudsmen accomplished commendable results given the multi-year stagnant funding environment that has offered minimal financial support for the ever increasing costs impacting Ombudsman Program operation. Additionally, state and regional programs have struggled to maintain services while planning for the looming federal mandatory funds sequestration which would further reduce Program operating funds, especially for travel, vitally needed to ensure that direct access and advocacy services are delivered to long-term care residents in the facilities.

Analysis of consumer data collected revealed that **48,801** consumers were touched by a Long-Term Care Ombudsman Program service at least once during 2013.

The breakdown of the number of consumers by service is indicated below:

<b>Provider In-Service trainees</b>	<b>7,961</b>
<b>Family and Resident Councils</b>	<b>2,355</b>
<b>Community Education participants</b>	<b>22,891</b>
<b>Public Relations/Media contacts</b>	<b>1,650</b>
<b>Press Releases</b>	<b>28</b>
<b>Technical Assistance to the Public</b>	<b>13,916</b>

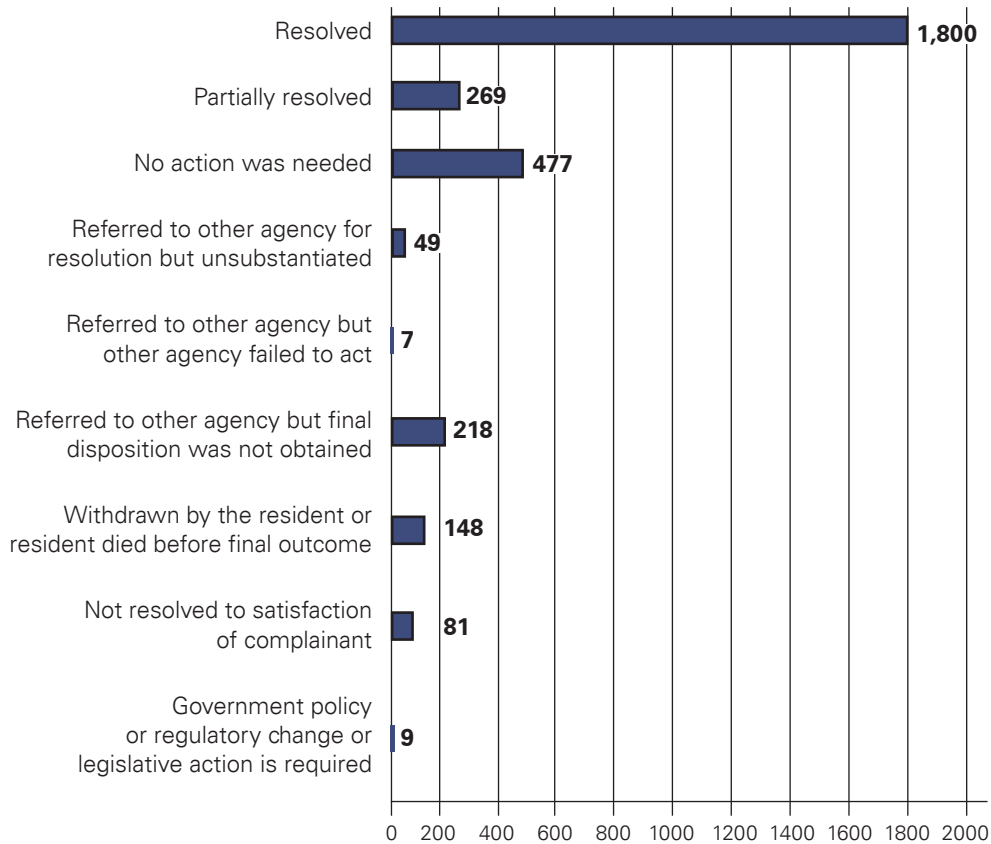
Consumer data related to complaint investigation activities, training for ombudsmen and community advisory committee members, state technical assistance to regional ombudsmen and participation in the state survey process were not included in the consumer data review.

Our accomplishments during 2013 demonstrate the veracity and determined commitment of the Long-Term Care Ombudsman Program to be a viable presence as the “Voice” of long-term care residents both with individual services and systemic advocacy.

**Complaint:** A concern brought to, or initiated by, the ombudsman for investigation and action by or on behalf of one or more residents of a long-term care facility relating to health, safety, welfare or rights of a resident.

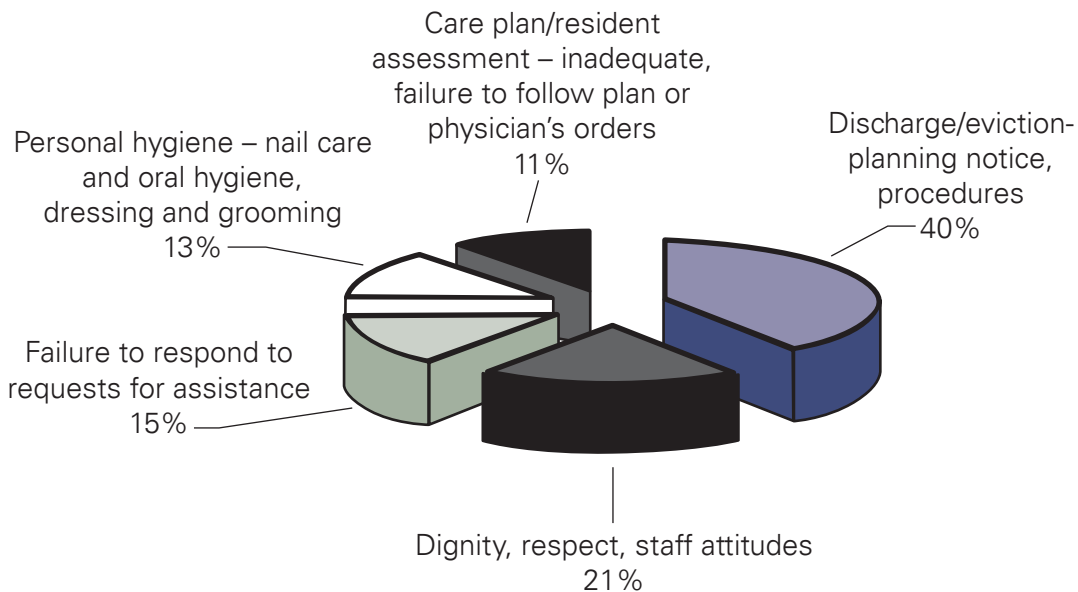
Total FFY 2013 Complaints	1,756	1,302
Ombudsman Complaint Categories	Nursing Home Total Percent	Adult Care Home Total Percent
<b>Resident Rights:</b> The right to a dignified existence, self-determination, communication and access to people inside or outside of the long-term care facility.	<b>731 (42%)</b>	<b>615 (47%)</b>
<b>Resident Care:</b> Necessary care and services to maintain the highest practicable physical, mental and psychosocial well-being according to comprehensive assessments and plans of care.	<b>538 (31%)</b>	<b>218 (17%)</b>
<b>Quality of Life:</b> A facility must care for those who live there in a manner and an environment that promotes maintenance and enhancement of each person's quality of life.	<b>286 (16%)</b>	<b>309 (24%)</b>
<b>Administration:</b> A facility must be administered to enable it to use its resources and staff effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each person who lives in the facility.	<b>98 (5%)</b>	<b>73 (5%)</b>
<b>Not Against Facility:</b> Complaints are against certification/licensing agency, State Medicaid, abuse by family or guardian, family conflict, Medicare, Mental Health, Adult Protective Services, Social Security or Veterans Administration.	<b>103 (6%)</b>	<b>87 (7%)</b>

### Disposition of Adult Care Home and Nursing Home Complaints FFY 2013





## Top Five Nursing Home Complaints FFY 2013



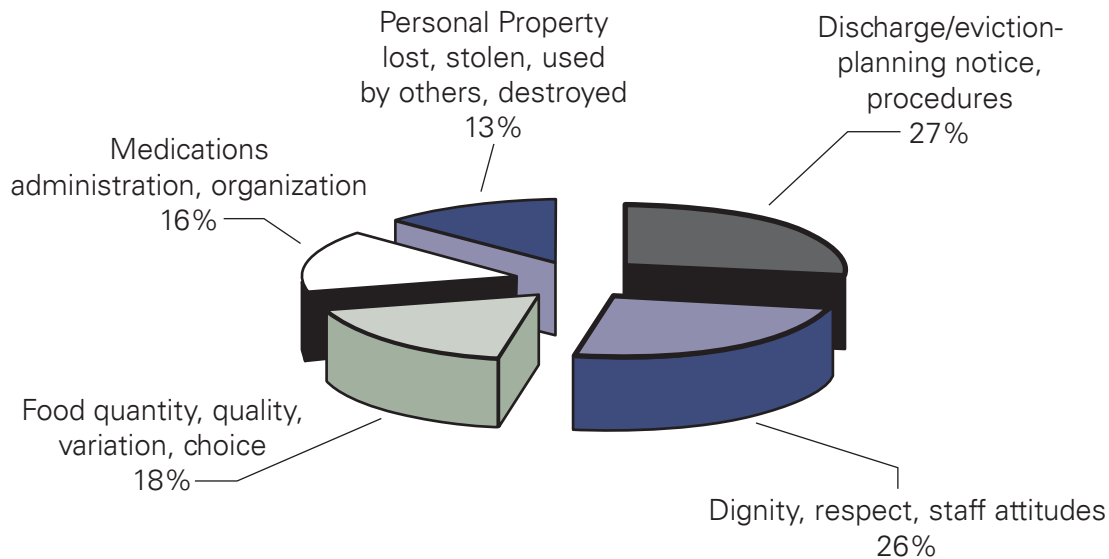
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### *Dignity and Respect*

*The right to be treated with dignity.*

- Everyone should knock before entering resident's room or bathroom.
  - Residents should be spoken to respectfully.
  - Call lights should be responded to promptly.
  - Residents should receive timely and courteous responses when assistance is needed in the bathroom.
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## Top Five Adult Care Home Complaints FFY 2013



### *Individuality*

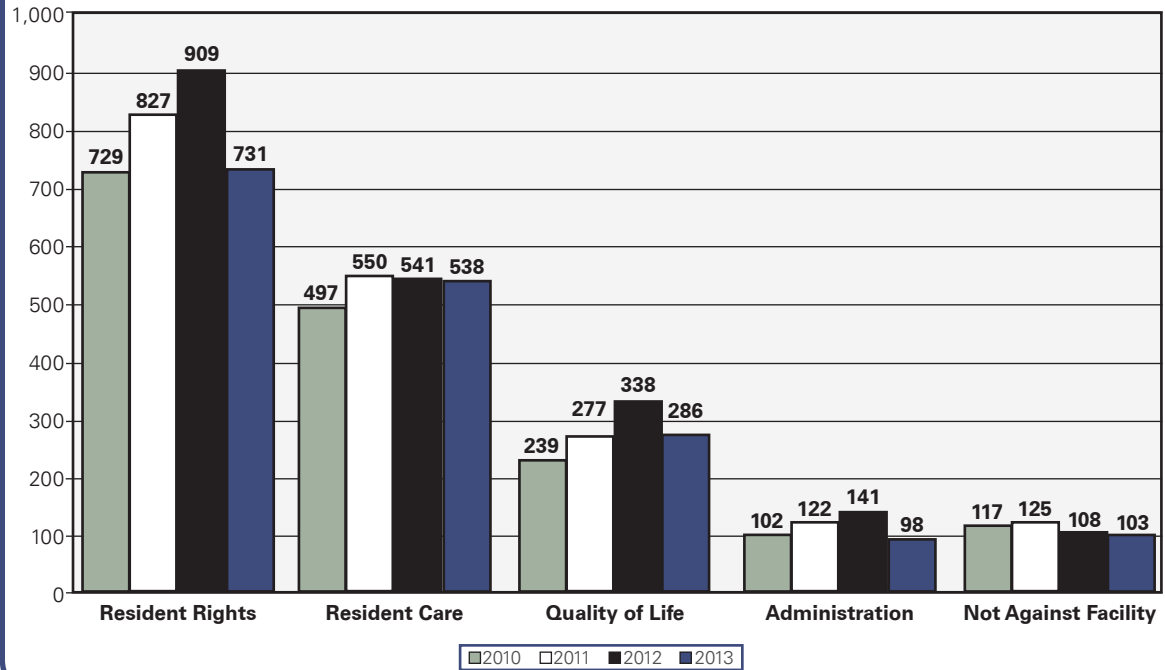
*The right to make your own  
decisions and choices.*

- A resident has the right to exercise their right as a resident of the facility and as a citizen or resident of the United States.
- All residents have preferences and choices that are important to them.
- It is nice when staff gets to know a person's routine, but everyone has a right to change their mind and try something different.

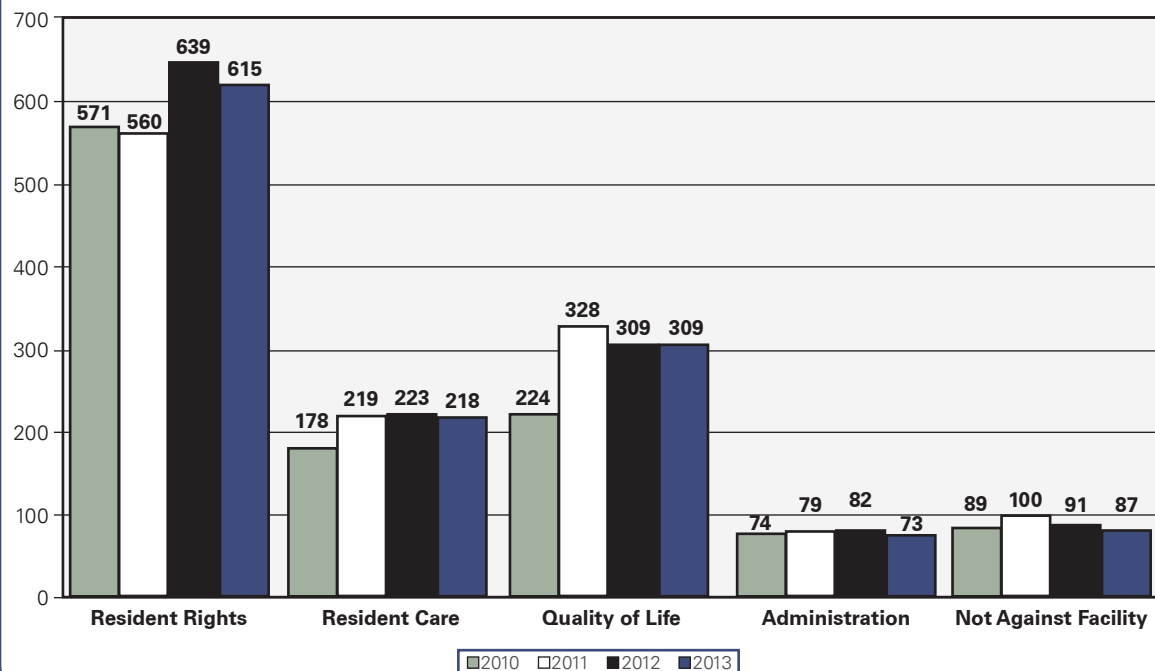
## Example of a Regional Ombudsman's Advocacy

A Regional Ombudsman was contacted by the son of a resident for assistance in advocating for his father to have more independence which he felt would boost his self esteem and improve his health status. The facility would not allow the father to have an electric wheelchair because it was against their policy. The Regional Ombudsman checked with a state surveyor and discovered that the Americans with Disabilities Act does not allow a residential care facility to prohibit electric wheel chairs. The son accompanied his father on a visit to his physician, and the physician wrote an order for the electric wheel chair. The son bought the motorized chair for his father. A few days later, the facility issued his father a discharge notice. The son felt this was retaliation for purchasing the wheel chair. The Regional Ombudsman worked with the son and the facility about the concern that the notice of discharge was retaliatory. The discharge notice was dropped. The father is now travelling about the facility in his electric wheel chair. He is eating more which is improving his health status and he has gained some new friends at the facility.

### Four Year Comparison of Nursing Home Complaints FFY 2010 – FFY 2013



### Four Year Comparison of Adult Care Home Complaints FFY 2010 – FFY 2013



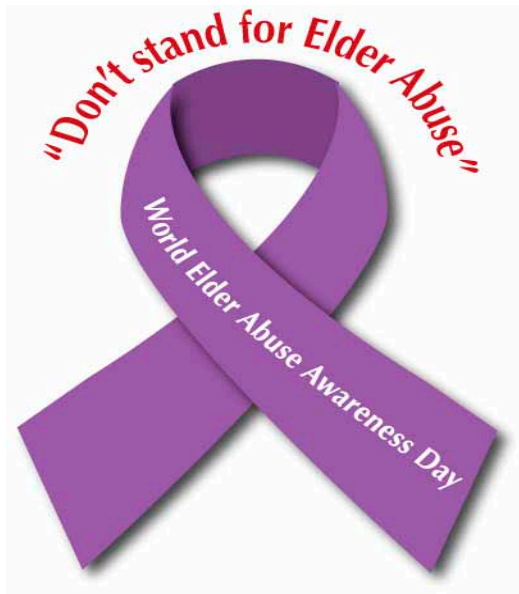


# Vulnerable Adult and Elder Abuse Awareness Month

May 10, 2013 – June 17, 2013

*Show the world you care by wearing Purple!*

The North Carolina Long-Term Care Ombudsman Program is committed to raising awareness of elder abuse; this includes elders who reside in long-term care facilities.

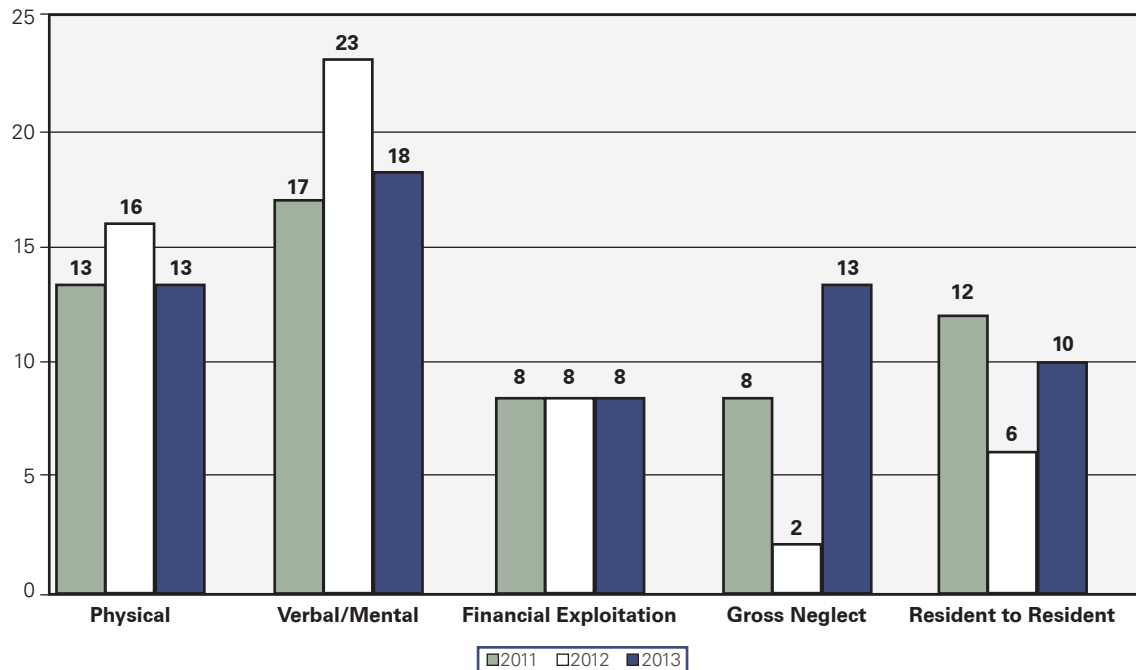


In 2013, there were more than 21,000 reports of abuse, neglect or exploitation of vulnerable and older adults made to North Carolina's 100 county departments of social services. It is estimated that only one in five of those crimes is reported.

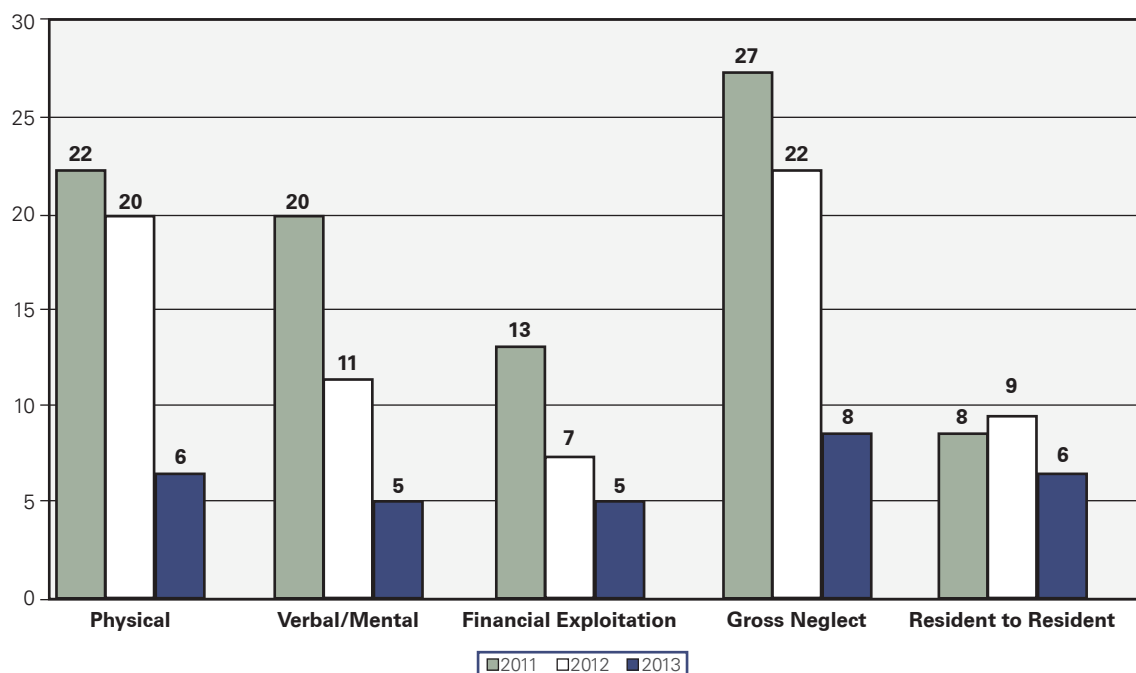
May 10, 2013 through June 17, 2013 was Vulnerable and Elder Abuse Awareness Month in North Carolina. This timeframe tied the awareness period to both the Mother's Day and Father's Day holidays, in the hopes of reinforcing the spirit of respecting and valuing, not just parents, but all elders.

Each one of us has a responsibility to support the safety, welfare, and dignity of North Carolina's vulnerable and older adults. We urge all citizens to work together to help protect adults from abuse, neglect, and exploitation. It is imperative that North Carolinians refuse to tolerate the indignity of Elder Abuse.

### Three Year Comparison of Abuse Complaints in Adult Care Homes FFY 2011 – FFY 2013



### Three Year Comparison of Abuse Complaints in Nursing Homes FFY 2011 – FFY 2013





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## Appendices

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### APPENDIX A:

Nursing Home and Adult Care Home Residents' Rights

### APPENDIX B:

FFY 2013 Data Tables and Major Long-Term Care  
Issues from the N.C. Ombudsman Reporting Tool

### APPENDIX C:

Older Americans Act Title VII

### APPENDIX D:

North Carolina LTC Ombudsman Program  
General Statute



# Appendix A

## North Carolina Adult Care Home Bill of Rights (Condensed Version)

### **Every resident shall have the following rights:**

1. To be treated with respect, consideration, dignity and full recognition of his or her individuality and right to privacy.
2. To receive care and services which are adequate, appropriate and in compliance with relevant federal and state laws and rules and regulations.
3. To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.
4. To be free of mental and physical abuse, neglect and exploitation.
5. Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.
6. To have his or her personal and medical record kept confidential and not disclosed without the written consent of the individual or guardian, which consent shall specify to whom disclosure may be made except as required by applicable state or federal statute or regulation or by third party contract.
7. To receive a reasonable response to his or her requests from the facility administrator and staff.
8. To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own initiative at any reasonable hour.
9. To have access at any reasonable hour to a telephone where he or she may speak privately.
10. To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery and postage.
11. To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.
12. To have and use his or her own possessions where reasonable and have an accessible lockable space provided for security of personal valuables. This space shall be accessible only to the residents and the administrator or supervisor in charge.
13. To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.
14. To be notified when the facility is issued a provisional license by the North Carolina Department of Health and Human Services and the basis on which the provisional license was issued. The resident's responsible family member or guardian shall also be notified.
15. To have freedom to participate by choice in accessible community activities and in social, political, medical and religious resources and to have freedom to refuse such participation.
16. To receive upon admission to the facility a copy of this section.
17. To not be transferred or discharged from a facility except for medical reasons, their own or other residents' welfare, or nonpayment. Except in cases of immediate jeopardy to health or safety, residents shall be given at least 30 days advance notice of the transfer or discharge and their right to appeal. \*\* Effective October 1, 2011, Session Law 2011-272/House Bill 677 requires facilities to convene the local "Adult Care Discharge Team" to assist facilities with finding placement for some residents. The ACH Resident Discharge Team consists of the Local Department of Social Services, the Local Management Entity, and the Regional LTC Ombudsman (if requested by the resident).

**The Ombudsman is an advocate for those who live in long term care facilities. For more information on resident rights, call the Regional Long Term Care Ombudsman.**

Your Regional Ombudsman is: \_\_\_\_\_ Telephone: \_\_\_\_\_

## North Carolina Bill of Rights for Nursing Home Residents (Condensed Version)

### **Every resident shall have the following rights:**

1. To be treated with consideration, respect and full recognition of personal dignity and individuality.
2. To receive care, treatment, and services that are adequate and appropriate, and in compliance with relevant federal and State rules.
3. To receive at the time of admission and during stay, a written statement of services provided by the facility and of related charges. Charges for services not covered under Medicare and Medicaid shall be specified.
4. To have on file physician's orders with proposed schedule of medical treatment. Written, signed evidence of prior informed consent to participation in experimental research shall be in patient's file.
5. To receive respect and privacy in his medical care program. All personal and medical records are confidential.
6. To be free of mental and physical abuse. To be free of chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical records.
7. To receive from the administrator or staff of the facility a reasonable response to all requests.
8. To receive visitors or have access to privacy in phone use at any reasonable hour. To send and receive mail promptly and unopened, with access to writing materials.
9. To manage his/her own financial affairs unless other legal arrangements have been so ordered.
10. To have privacy in visits by the patient's spouse.
11. To enjoy privacy in his/her own room.
12. To present grievances and recommend changes in policies and services without fear of reprisal, restraint, interference, coercion or discrimination.
13. To not be required to perform services for the facility without resident's consent and written approval of the attending physician.
14. To retain, to secure storage for, and to use his personal clothing and possessions, where reasonable.
15. To not be transferred or discharged from a facility except for medical, financial, or their own or other patient's welfare. Any such transfer shall require at least five days' notice, unless the attending physician orders immediate transfer, which shall be documented in the patient's medical record.
16. To be notified when the facility's license is revoked or made provisional. The responsible party or guardian must be notified, also.

**The Ombudsman is an advocate for those who live in long-term care facilities. For more information on resident rights, call the Regional Long-Term Care Ombudsman.**

Your Regional Ombudsman is: \_\_\_\_\_ Telephone: \_\_\_\_\_

# Appendix B

## FFY 2013 Part I. Data Tables from N.C. Ombudsman Reporting Tool & Part II. Major Long-Term Care Issues

### Part I - Cases, Complainants and Complaints

#### D. Types of Complaints, by Type of Facility

Below and on the following pages provide the total number of complaints for each specific complaint category, for nursing facilities and board and care or similar type of adult care facility. The first four major headings are for complaints involving action or inaction by staff or management of the facility. The last major heading is for complaints against others outside the facility. See Instructions for additional clarification and definitions of types of facilities and selected complaint categories.

##### Residents' Rights

##### A. Abuse, Gross Neglect, Exploitation

1. Abuse, physical (including corporal punishment)
2. Abuse, sexual
3. Abuse, verbal/psychological (including punishment, seclusion)
4. Financial exploitation (use categories in section E for less severe financial complaints)
5. Gross neglect (use categories under Care, Sections F & G for non-willful forms of neglect)
6. Resident-to-resident physical or sexual abuse
7. Not Used

Nursing Facility	B&C, ALF, RCF, etc.
5	13
1	0
5	18
5	8
8	13
6	10

##### B. Access to Information by Resident or Resident's Representative

8. Access to own records
9. Access by or to ombudsman/visitors
10. Access to facility survey/staffing reports/license
11. Information regarding advance directive
12. Information regarding medical condition, treatment and any changes
13. Information regarding rights, benefits, services, the resident's right to complain
14. Information communicated in understandable language
15. Not Used

15	7
7	10
0	0
2	2
14	14
10	17
0	1

##### C. Admission, Transfer, Discharge, Eviction

16. Admission contract and/or procedure
17. Appeal process - absent, not followed
18. Bed hold - written notice, refusal to readmit
19. Discharge/eviction - planning, notice, procedure, implementation, inc. abandonment
20. Discrimination in admission due to condition, disability
21. Discrimination in admission due to Medicaid status
22. Room assignment/room change/intra-facility transfer
23. Not Used

3	3
0	0
2	2
222	108
0	0
2	0
27	14

##### D. Autonomy, Choice, Preference, Exercise of Rights, Privacy

24. Choose personal physician, pharmacy/hospice/other health care provider
25. Confinement in facility against will (illegally)
26. Dignity, respect - staff attitudes
27. Exercise preference/choice and/or civil/religious rights, individual's right to smoke
28. Exercise right to refuse care/treatment

4	4
8	10
116	101
55	45
11	4

- 29. Language barrier in daily routine
- 30. Participate in care planning by resident and/or designated surrogate
- 31. Privacy - telephone, visitors, couples, mail
- 32. Privacy in treatment, confidentiality
- 33. Response to complaints
- 34. Reprisal, retaliation
- 35. Not Used

1	0
8	3
23	29
5	12
45	20
10	17

#### E. Financial, Property (Except for Financial Exploitation)

- 36. Billing/charges - notice, approval, questionable, accounting wrong or denied (includes overcharge of private pay residents)
- 37. Personal funds - mismanaged, access/information denied, deposits and other money not returned (report criminal-level misuse of personal funds under A.4)
- 38. Personal property lost, stolen, used by others, destroyed, withheld from resident
- 39. Not Used

51	42
21	36
39	52

### Resident Care

#### F. Care

- 40. Accidental or injury of unknown origin, falls, improper handling
- 41. Failure to respond to requests for assistance
- 42. Care plan/resident assessment - inadequate, failure to follow plan or physician orders (put lack of resident/surrogate involvement under D.30)
- 43. Contracture
- 44. Medications - administration, organization
- 45. Personal hygiene (includes nail care & oral hygiene) and adequacy of dressing & grooming
- 46. Physician services, including podiatrist
- 47. Pressure sores, not turned
- 48. Symptoms unattended, including pain, pain not managed, no notice to others of changes in condition
- 49. Toileting, incontinence care
- 50. Tubes - neglect of catheter, gastric, NG tube (use D.28 for inappropriate/forced use)
- 51. Wandering, failure to accommodate/monitor exit seeking behavior
- 52. Not Used

32	9
82	21
63	29
2	0
62	62
74	22
21	14
21	3
41	21
38	3
6	0
7	5

#### G. Rehabilitation or Maintenance of Function

- 53. Assistive devices or equipment
- 54. Bowel and bladder training
- 55. Dental services
- 56. Mental health, psychosocial services
- 57. Range of motion/ambulation
- 58. Therapies - physical, occupational, speech
- 59. Vision and hearing
- 60. Not Used

32	12
2	1
5	3
3	2
12	3
22	3
1	1

#### H. Restraints - Chemical and Physical

- 61. Physical restraint - assessment, use, monitoring
- 62. Psychoactive drugs - assessment, use, evaluation
- 63. Not Used

6	1
6	3

### Quality of Life

**I. Activities and Social Services**

- 64. Activities - choice and appropriateness
- 65. Community interaction, transportation
- 66. Resident conflict, including roommates
- 67. Social services - availability/appropriateness/ (use G.56 for mental health, psychosocial counseling/service)
- 68. Not Used

11	24
3	18
21	25
13	0

**J. Dietary**

- 69. Assistance in eating or assistive devices
- 70. Fluid availability/hydration
- 71. Food service - quantity, quality, variation, choice, condiments, utensils, menu
- 72. Snacks, time span between meals, late/missed meals
- 73. Temperature
- 74. Therapeutic diet
- 75. Weight loss due to inadequate nutrition
- 76. Not Used

16	2
22	3
44	70
9	13
6	14
23	8
10	5

**K. Environment**

- 77. Air/environment: temperature and quality (heating, cooling, ventilation, water, noise)
- 78. Cleanliness, pests, general housekeeping
- 79. Equipment/building - disrepair, hazard, poor lighting, fire safety, not secure
- 80. Furnishings, storage for residents
- 81. Infection control
- 82. Laundry - lost, condition
- 83. Odors
- 84. Space for activities, dining
- 85. Supplies and linens
- 86. Americans with Disabilities Act (ADA) accessibility

15	23
19	27
18	27
2	8
8	5
18	18
13	5
0	1
12	12
3	1

**Administration****L. Policies, Procedures, Attitudes, Resources (See other complaint headings, of above, for policies on advance directives, due process, billing, management residents' funds)**

- 87. Abuse investigation/reporting, including failure to report
- 88. Administrator(s) unresponsive, unavailable
- 89. Grievance procedure (use C for transfer, discharge appeals)
- 90. Inappropriate or illegal policies, practices, record-keeping
- 91. Insufficient funds to operate
- 92. Operator inadequately trained
- 93. Offering inappropriate level of care (for B&C/similar)
- 94. Resident or family council/committee interfered with, not supported
- 95. Not Used

0	1
9	8
9	4
0	2
0	0
2	0
1	4
1	1

**M. Staffing**

- 96. Communication, language barrier (use D.29 if problem involves resident inability to communicate)
- 97. Shortage of staff
- 98. Staff training
- 99. Staff turn-over, over-use of nursing pools
- 100. Staff unresponsive, unavailable

6	4
26	14
4	6
1	0
36	22

101. Supervision	1	7
102. Eating Assistants	2	0

**Not Against Facility****N. Certification/Licensing Agency**

103. Access to information (including survey)	0	5
104. Complaint, response to	3	10
105. Decertification/closure	1	0
106. Sanction, including Intermediate	1	0
107. Survey process	0	0
108. Survey process - Ombudsman participation	0	0
109. Transfer or eviction hearing	10	3
110. Not Used		

**O. State Medicaid Agency**

111. Access to information, application	2	4
112. Denial of eligibility	3	3
113. Non-covered services	3	2
114. Personal Needs Allowance	0	2
115. Services	6	2
116. Not Used		

**P. System/Others**

117. Abuse/neglect/abandonment by family member/friend/guardian or, while on visit out of facility, any other person	4	3
118. Bed shortage - placement	0	0
119. Facilities operating without a license	0	0
120. Family conflict; interference	21	12
121. Financial exploitation or neglect by family or other not affiliated with facility	2	1
122. Legal - guardianship, conservatorship, power of attorney, wills	16	10
123. Medicare	5	1
124. Mental health, developmental disabilities, including PASRR	4	0
125. Problems with resident's physician/assistant	2	1
126. Protective Service Agency	1	1
127. SSA, SSI, VA, Other Benefits/Agencies	2	2
128. Request for less restrictive placement	17	25
<b>Total, categories A through P</b>	1,756	1,302

**Q. Complaints About Services in Settings Other Than Long-Term Care Facilities or By Outside Provider in Long-Term Care Facilities (see instructions)**

129. Home care	0
130. Hospital or hospice	0
131. Public or other congregate housing not providing personal care	0
132. Services from outside provider (see instructions)	0
133. Not Used	
<b>Total, Heading Q.</b>	0

**Total Complaints\***

3,058
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## Part II. Major Long-Term Care Issues

### (Information submitted by N.C. on the National Ombudsman Reporting Tool)

A. Describe the priority long-term care issues which your program identified and/or worked on during the reporting period. For each issue, briefly state: a) the problem and barriers to resolution, and b) recommendations for system-wide changes needed to resolve the issue, or how the issue was resolved in your State. Examples of major long-term care issues may include facility closures, planning for alternatives to institutional care, transition of residents to less restrictive settings, etc.

The N.C. LTC Ombudsman Program has continued active collaboration through work with state-level work groups and sub-committees focused on addressing transitioning residents from adult care homes to community based settings with appropriate support services. This major focus is a result of multiple Medicaid initiatives outlined in last year's report:

1. The state-wide determination process focused on identifying all adult care homes operating as Institutions of Mental Disease per Medicaid directives.
2. Changes in Medicaid eligibility requirements for Personal Care Services which resulted in adult care home resident discharges,
3. A DHHS in-reach and transition plan designed through a federal DOJ Corrective Action Plan to assist some residents with exercising choices for other housing options besides the long-term care setting.

Available and affordable alternative housing continues to be a barrier encountered, especially for individuals requiring substantial wrap-around services to support community based living. The State Office keeps Regional Ombudsmen informed about the initiatives which are primarily impacting adult care home residents. Regional Ombudsmen visit affected adult care homes, ensuring

residents are informed of their rights to make choices as well as assisting those residents who may have been issued a discharge notice due to changes in Medicaid eligibility.

Also, during 2013, several adult care homes closed abruptly, without plans for an orderly discharge of residents. While the immediate response by both state and local agencies was successful, DHHS asked for the development of a stakeholder plan of action for any future sudden closures with high potential for negative impact on the residents. The State Ombudsman participated in the group pulled together to develop this plan as well as two sub-committees developing specific steps. The result is a new guide: DHHS Operational Guide for a Coordinated Response to the Sudden Closure of an Adult Care Home Facility. Statewide training is now being developed. Additionally the State Ombudsman serves as a point of contact for the recently formed DHHS Response HUB in order to activate Regional Ombudsmen as potential situations are identified.

# Appendix C

## **Title VII, Chapter 2, Section 712**

### **2000 Amendments to the Older Americans Act**

SEC 712 (42 U.S.C. 3058g) STATE LONG TERM CARE OMBUDSMAN PROGRAM.

(a) Establishment.—

(1) In general. In order to be eligible to receive an allotment under Section 703 from funds appropriated under Section *702 and made available to carry out this chapter*, a State agency shall, in accordance with this Section

(A) establish and operate an Office of the State Long Term Care Ombudsman; and

(B) carry out through the Office a State Long Term Care Ombudsman program.

(2) Ombudsman. The Office shall be headed by an individual, to be known as the State Long Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy.

(3) Functions. The Ombudsman shall serve on a full time basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that –

(i) are made by, or on behalf of, residents and

(ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of

(I) providers, or representatives of providers, of long-term care services;

(II) public agencies; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G) (i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H) (i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate

(4) Contracts and arrangements.--

(A) In general. Except as provided in subparagraph (B), the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) Licensing and certification organizations; associations. The State agency may not enter into the contract or other arrangement described in subparagraph (A) with

(i) an agency or organization that is responsible for licensing or certifying long term care services in the State; or

- (ii) an association (or an affiliate of such an association) of long term care facilities, or of any other residential facilities for older individuals.
- (5) Designation of local ombudsman entities and representatives.–
- (A) Designation. – In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.
  - (B) Duties. – An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency
    - (i) provide services to protect the health, safety, welfare and rights of residents;
    - (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
    - (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or
  - (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
  - (v)
    - (I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
    - (II) facilitate the ability of the public to comment on the laws, regulation, policies, and actions;
  - (vi) support the development of resident and family councils; and
  - (vii) carry out other activities that the Ombudsman determines to be appropriate.
- (C) Eligibility for designation. Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall

- (i) have demonstrated capability to carry out the responsibilities of the Office;
  - (ii) be free of conflicts of interest *and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves*;
  - (iii) in the case of the entities, be public or nonprofit private entities; and
  - (iv) meet such additional requirements as the Ombudsman may specify.
- (D) Policies and procedures.--

- (i) In general. The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.
- (ii) Policies. In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.
- (iii) Confidentiality and disclosure. The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) Procedures for Access.--

- (1) In General. The State shall ensure that representatives of the Office shall have--
  - (A) access to long term care facilities and residents;
  - (B) (i) appropriate access to review the medical and social records of a resident, if
    - (I) the representative has the permission of the resident, or the legal representative of the resident; or
    - (II) the resident is unable to consent to the review and has no legal representative; or
  - (ii) access to the records as is necessary to investigate a complaint if
    - (I) a legal guardian of the resident refuses to give the permission;

- (II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
    - (III) the representative obtains the approval of the Ombudsman;
  - (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long term care facilities; and
  - (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long term care facilities.
- (2) Procedures.—The State agency shall establish procedures to ensure the access described in paragraph (1).
- (c) Reporting System.—The State agency shall establish a statewide uniform reporting system to—
- (1) collect and analyze data relating to complaints and conditions in long term care facilities and to residents for the purpose of identifying and resolving significant problems; and
  - (2) submit the data, on a regular basis, to
    - (A) the agency of the State responsible for licensing or certifying long term care facilities in the State;
    - (B) other State and Federal entities that the Ombudsman determines to be appropriate;
    - (C) the Assistant Secretary; and
    - (D) the National Ombudsman Resource Center established in Section 202(a)(21).
- (d) Disclosure.—
- (1) In general.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).
  - (2) Identity of complainant or resident.—The procedures described in paragraph (1) shall—
    - (A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

- (B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—
  - (i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;
  - (ii) (I) the complainant or resident gives consent orally; and  
(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
  - (iii) the disclosure is required by court order.
- (e) Consultation.—In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long term care.

**(f) Conflict of Interest.—The State agency shall—**

- (1) Ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;**
- (2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;
- (3) ensure that the Ombudsman—
  - (A) does not have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service;
  - (B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long term care facility or a long term care service;
  - (C) is not employed by, or participating in the management of, a long term care facility; and
  - (D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long term care facility; and



- (4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as--
  - (A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and
  - (B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.
- (g) Legal Counsel.--The State agency shall ensure that--
  - (1) (A) adequate legal counsel is available, and is able, without conflict of interest, to
    - (i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and
    - (ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and
  - (B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and
  - (2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.
- (h) Administration.--The State agency shall require the Office to--
  - (1) prepare an annual report--
    - (A) describing the activities carried out by the Office in the year for which the report is prepared;
    - (B) containing and analyzing the data collected under subsection (c);
    - (C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;
    - (D) containing recommendations for
      - (i) improving quality of the care and life of the residents; and
      - (ii) protecting the health, safety, welfare, and rights of the residents;

- (E) (i) analyzing the success of the program including success in providing services to residents of board (and care facilities and other similar adult care facilities; and
- (ii) identifying barriers that prevent the optimal operation of the program; and
- (F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

**(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulation, and policies as the Office determines to be appropriate;**

- (3) (A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding–
  - (i) the problems and concerns of older individuals residing in long term care facilities; and
  - (ii) recommendations related to the problems and concerns; and
- (B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);
- (4) *strengthen and update* procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long term care providers, and the Office, that–
  - (A) specify a minimum number of hours of initial training;
  - (B) specify the content of the training, including training relating to–
    - (i) Federal, State, and local laws, regulations, and policies, with respect to long term care facilities in the State;

- (ii) investigative techniques; and
    - (iii) such other matters as the State determines to be appropriate; and
  - (C) specify an annual number of hours of in service training for all designated representatives;
  - (5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative--
    - (A) has received the training required under paragraph (4); and
    - (B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;
  - (6) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under--
    - (A) part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.); and
    - (B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);
  - (7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;
  - (8) *coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and*
  - (9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).
- (i) Liability.--The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) Noninterference.--The State shall--

- (1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;
- (2) prohibit retaliation and reprisals by a long term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
- (3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

# Appendix D

## Long-Term Care Ombudsman Program.

### Part 14D. North Carolina State Long-term Care Ombudsman Program

#### § 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the further intent of the General Assembly that the Department of Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level. (1989, c. 403, s. 1; 1995, c. 254, s. 1; 1997-443, s. 11A.118 (a).)

#### § 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

- (1) "Long-term care facility" means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).
- (2) "Resident" means any person who is receiving treatment or care in any long-term care facility.
- (3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.
- (4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article. (1989, c. 403, s. 1; 1995, c. 254, s. 2; c. 535, s. 35.)

**§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office; establishment.**

The Secretary of Department of Health and Human Services shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care. The Attorney General shall provide legal staff and advice to this Office. (1989, c. 403, s. 1; 1997-443, s. 11A.118 (a).)

**§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.**

The State Ombudsman shall:

- (1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;
- (2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to G.S. 143B-10;
- (3) Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;
- (4) Attempt to resolve complaints made by or on behalf individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;
- (5) Provide training and technical assistance to regional ombudsmen;
- (6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;

- (7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;
- (8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;
- (9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and
- (10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution. (1989, c. 403, s. 1; 1995, c. 254, s. 3; 1997-443, s. 11A.118(a).)

**§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional Ombudsman; duties.**

- (a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.
- (b) Pursuant to policies and procedures established by the State Office of Long-Term Care Ombudsman, the Regional Ombudsman shall:
  - (1) Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration;
  - (2) Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;
  - (3) Collect data about the number and types of complaints handled;
  - (4) Work with long-term care providers to resolve issues of common concern;
  - (5) Work with long-term care providers to promote increased community involvement;
  - (6) Offer assistance to long-term care providers in staff training regarding residents' rights;

- (7) Report regularly to the office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;
- (8) Provide training and technical assistance to the community advisory committees; and
- (9) Provide information to the general public on long-term care issues. (1989, c. 403.)

**§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.**

- (a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor.
- (b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.
- (c) **The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.**
- (d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.



- (e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.
- (f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes. (1989, c. 403, s. 1; 1993, c. 539, s. 1038; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 254, s. 4.)

**§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.**

- (a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal technique of mediation, conciliation, and persuasion.
- (b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and G.S.131D-2. (1989, c. 403.)

**§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.**

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. (1989, c. 403, s. 1; 1995, c. 254, s. 5.)

**§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of retaliation.**

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the State Ombudsman or Regional Ombudsman. (1989, c. 403.)

**§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity from liability.**

No representative of the Office shall be liable for good faith performance of official duties. (1989, c. 403.)

**§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.**

Willful or unnecessary obstruction with the State or Regional Long-Term Care Ombudsman in the performance of his official duties is a Class 1 misdemeanor. (1989, c. 403; 1993, c. 539, s. 1039; 1994, Ex. Sess., c. 24, s. 14(c).)





State of North Carolina  
Pat McCrory, Governor

Department of Health and Human Services  
Aldona Z. Vos, M.D., Secretary

Suzanne Merrill, Director, Division of Aging and Adult Services  
Sharon C. Wilder, State Long-Term Care Ombudsman

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